

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

1998 Biennial Regulatory Review-
Streamlining of Mass Media
Applications, Rules and
Processes.

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MM Docket No. 98-43

TO: The Commission.

COMMENTS OF MICHAEL ROBERT BIRDSILL.

The Federal Communications Commission ("FCC") is presently considering several changes to it's Rules and Regulations that pertain to Applications, Rules and Processes of the Mass Media Bureau. I offer these COMMENTS to some of the proposed changes. I have been a Broadcaster for over 25 years, the last 20 years employed in Broadcast Engineering Management and Consulting. I have constructed several FM Radio Stations in Northern California, including one which I owned myself. I am keenly familiar with the issues of MM Docket No. 98-43 and offer these COMMENTS as someone who has "been there, done that."

ELECTRONIC FILLING OF APPLICATIONS.

I support making the electronic filing of Applications permissive rather than mandatory. While there seems to exist the notion that "everyone" has a computer, uses the Internet, and could easily file Applications electronically, I firmly believe this is not true. I suspect the small Broadcaster,

with one or two Stations in a single market, would be adversely affected if the filing of Applications electronically was made mandatory. The large "super groups" have at their disposal the infrastructure (computers) and personnel (with computer training) which would make the filing of electronic Applications desirable and cost effective.

By making the electronic filing of Applications permissive rather than mandatory, the "market place" will determine who uses electronic filing and who continues to file paper. If paper Applications are filed, the FCC could then scan them into electronic form for their uses. Charging higher filing fees for paper Applications is unwarranted and would be discriminatory.

STREAMLINING APPLICATION PROCESSING.

I fully support the complete elimination of the "no profit" rule that currently applies to "unbuilt stations". This rule should be eliminated without regard to whether a station is commercial or non-commercial, and without regard to the manner by which the Construction Permit ("CP") was granted, i.e. an existing CP, a singleton Applicant, or via Auction. It would make no Regulatory sense to retain the "no profit" rule in any form. Elimination of this rule can only hasten the implementation of new Broadcast service for the listening/viewing Public.

I support the proposal that Station Assignment/Transfer

Contracts should only be filed in the Public Inspection File of the Station. Further, those Contracts should only need to be retained in the Public Inspection File while the FCC is considering the Assignment/Transfer. Once the Assignment/Transfer is consummated, the Contracts can be removed from the Public Inspection File. Any party who wishes to view the Contracts can do so by visiting the Station and viewing the Public Inspection File, and in addition can request a copy of the Contracts per the Public Inspection File rules.

I support the new versions of the Application forms cited in MM Docket No. 98-43.

With regard to Modifying Construction Permit Extension Procedures, I support a longer initial Construction Period. In fact, based on my experience, I believe a period of 4 years would be appropriate. In today's construction environment longer time periods are needed. Tower construction takes longer than in the past, given the number of local regulatory agencies (zoning/planning) that are involved. Tower space is now at a premium as the implementation of Digital Television (DTV) looms on the horizon. The net effect is that more towers are going to have to be built, either to accommodate new Broadcast service or Broadcasters that are displaced from an existing tower because the tower owner is involved in DTV.

Concerning granting an Extension to a Construction Permit after the initial Construction Period, I believe that the FCC should institute an automatic "administrative extension". That is, during the initial Construction Period of an CP, when

a Permittee files an Application (modification, assignment/transfer, etc) or a Rulemaking Petition (upgrade on a non-adjacent Channel, change of community of license), the CP will be extended by a time period equal to the amount of time the Application/Rulemaking was pending before the FCC. The time periods involved would be easy to calculate, as each Application/Rulemaking is assigned a number that represents the date the document was filed at the FCC, and each action taken relative to an Application/Rulemaking would have a specific date when the FCC made a decision. The FCC could simply notify the Permittee, maybe via a simple postcard, of the new expiration date of the CP.

Without such an automatic "administrative extension", a Permittee could have a CP expire while an Application/Rulemaking was pending before the FCC, especially if the Application/Rulemaking was opposed by a third party.

I believe that delays caused by local regulatory agencies (zoning/planning) should be a basis for a one time, 6 month extension of a CP, given a longer initial Construction Period, as proposed. I was personally involved in a Station construction project where the week before I planned install the FM Antenna on an existing tower, the local Planning Director for that County called me to inform me he had "decided" the Permittee would need a Special Use Permit before installation of the FM Antenna could begin. This was after months of being assured by the same Planning Department that the only Permit that was required was a Building Permit for the Transmitter building, since we

were installing the Antenna on an existing tower. It was approximately 3 months before that process was complete and the installation of the FM Antenna could proceed.

Finally, I believe that Application of the New Rules to Outstanding Permits is unjustified, as those Permittees should be afforded the opportunity to construct their Stations on the basis of the Rules in effect at the time their CP was granted. To do otherwise would precipitate situations where a CP granted 10 days before the effective date of the new Rules would have a little less than 18 months to complete construction, whereas a CP granted 10 days after the effective date of the new Rules would have 3 (or 4) years to complete construction. Truly not an equitable situation, especially given the fact that an Applicant has no control over the date on which the FCC grants a CP. Therefore, the FCC should simply announce that Applications for CPs granted as of a certain date will be governed by the new Rules, and previously granted CPs will be governed by the old Rules, and apply the Rules accordingly.

Respectfully submitted,

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